IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO.980 OF 1996

Narsu Devappa Magdum
resident of Ward No.8, House
No.597, Sangli Ves, Ichalkaranji,
Taluka Hatkanangale,
District Kolhapur ...Appellant.

V/s.

Government of Maharashtra
through Collector, District Kolhapur ...Respondent.

Mr.Umesh Malkapure with Mr.R.V.More for the Appellant.
Mr.A.R.Patil, A.G.P. for the State.

WITH
FIRST APPEAL NO.1018 OF 1996

Sou. Vilasmati Narsu Magdum,
R/o. Ward No.8,
House No.597, Sangli Ves,
Ichalkaranji, Dist. Kolhapur. ...Appellant.

V/s.

1. The State of Maharashtra

2. The Collector of Kolhapur,
District:- Kolhapur. ...Respondents.

Mr.N.J.Patil for the Appellant.
Mr.A.R.Patil, A.G.P. for the State.

CORAM: R.M.S.KHANDEPARKAR &
V.M.KANADE,JJ.
DATE : 6th October, 2005.

ORAL JUDGMENT: (Per V.M.Kanade,J.)

1. These Appeals can be disposed of by common judgment since the Appellants are husband and wife and the property in question is adjacent to each other and further

evidence in both these cases is common.

2. Brief facts are as under:

The land which was acquired by the Government was situated in Ichalkaranji and was acquired for the purpose of "Housing for Dishoused". Since the land was reserved under the development plan, it was acquired by the planning authority, for the purpose for which it is acquired, Notification under section 6 read with Section 126 (2) and (3) Section 6 of the Land Acquisition Act read with 126 (2 & 3) of the Maharashtra Regional and Town Planning Act, hereinafter referred to as M.R.T.P.Act was issued on 19th November, 1987. The total area of the land which was sought to be acquired was one hectare and 12.5 R out of which 50% was owned by the Appellant Narsu Devappa in First Appeal No.980 of 1996 and 50% of the plot was owned by Smt. Vilasmati Narsu Magdum, Appellant in First Appeal No.1018 of 1996. Award was passed by Special Land Acquisition Officer on 31/3/1989 who awarded a compensation of Rs.2/- per square foot. Application under section 18 was preferred by Appellant before the Reference Court seeking compensation at the rate of Rs.125/- per

square foot. Reference Court by its judgment awarded enhanced compensation to Rs.12/- per square foot. Both the Appellants are challenging the Judgments passed by the Reference Court.

3. The learned counsel appearing on behalf of the Appellants has taken us through the judgment and the order passed by the Reference Court. It was a common judgment in respect of two Reference Applications filed by the claimants. The learned counsel has invited our attention to the various sale instances which were relied upon by the claimants as award passed in land reference cases in respect of liable properties. It was submitted that in 1988 and 1989 adjoining land was sold at the rate of 125 per square foot. It was submitted that admittedly, adjoining land which was acquired had already been converted for non-agricultural purpose and the land in question had tremendous potential for commercial use. It was submitted that Ichalkaranji is a developed town and is well-known for its factories and foundries. The learned counsel invited our attention to a award passed in respect of adjoining land which was acquired and compensation at the rate of Rs.12/- per square foot was awarded in 1979. He also invited our attention to sale instance of the year 1986 where the adjoining plots were 150 square foot away from the land in question was sold at the rate of 12 per

square foot. He submitted that therefore, the enhanced compensation at the rate of atleast Rs.100 per square foot was liable to be granted in favour of the claimant.

4. The learned A.G.P. Mr.Patil on the other hand vehemently opposed the submissions made by the Appellants. He submitted that the very fact of the adjoining land which was sold in the year 1986 at the rate of Rs.12 per square metre and that was admittedly converted as a N.A. land, there was no question of granting compensation to the Petitioner's land which was admittedly being used for agricultural purpose at the rate of Rs.12/- per square metre or any other higher rate than the said amount. He submitted that admittedly land of the claimants is a large chunk of land admeasuring 1 hectare 12.5 H. The sale instance on which reliance was placed, was land admeasuring 40 X 45 square foot. He submitted that therefore, there can be no comparison between small piece of land which was used for non agricultural purpose and land of the claimants which is a large chunk of land used for agricultural purpose. He submitted that therefore, claimants were not entitled to get compensation on per square foot basis. He also submitted that in respect of the compensation in respect of land where compensation was awarded in the year 1979 at the rate of Rs.12 per square foot. The witness who was examined by the claimants had not stated the area of

the land which was acquired nor had given any comparable instances regarding the similarity of both these lands. He submitted that in absence of these particulars, it was not possible to take into consideration award passed in the said case.

5. We have given our anxious consideration to the submissions made by the learned counsel for the Appellants and the learned A.G.P. appearing on behalf of the State. In the present case, it is admitted position that in the year 1979 the land which was adjoining to the land in question was acquired and compensation at the rate of Rs.12/- per square metre was granted. Though the witness examined by the claimant has not given the details regarding the description of the land, fact that the said land was a adjoining land has not been disputed by the Government and which can be seen from the record that it was a part of same survey number as the land of the claimants. In our view, therefore, reliance can be placed on the said award which was passed in respect of the said land and compensation at the rate of Rs.12/- per square foot was granted in the year 1979. If an increase in the prices at the rate of 10% per year is taken into consideration towards the increase in the price of the land then from 1979 to 19th November, 1987, the price would increase by 8 times which would roughly come to Rs.21.16

per square foot. In our view that would be the fair market value of the land in question in the year 1987. Another aspect which cannot be overlooked is the fact that the entire locality adjoining the land which was acquired already was well developed by the time Notification issued by the Government. And therefore, though the lands of the claimants were agricultural lands and had not been converted to N.A. use, yet it had N.A. potential. It is evident from the fact that all other lands had been developed and were put to commercial use. N.A. potential were therefore definitely there though no application had been preferred by the claimants for converting the said land to N.A. use. Reference Court after taking into consideration the deductions which would have to be made for the purpose of putting the land for commercial use had awarded compensation at the rate of Rs.12/- per square foot. In our view the claimants are entitled to additional compensation of Rs.10/- per square foot after rounding of figure 21.16 which is arrived at by considering the rise in the price at the rate of 10% per year.

6. The submissions made on behalf of the learned counsel appearing on behalf of the Appellants are therefore, partly accepted and compensation is enhanced by further amount of Rs.10/- per square foot. First Appeals therefore, accordingly, are allowed in above terms and all

consequential benefits which the Appellants are entitled would be calculated on the basis of enhanced figures and award passed by the Reference Court is accordingly modified. Enhanced amount would be paid within 12 weeks from today.

7. Certified copy expedited.

8. Under the circumstances, there shall be no order as to costs.

(R.M.S.KHANDEPARKAR,J.)

(V.M.KANADE,J.)